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8 IN THE UNITED STATES DISTRICT COURT
9 FOR THE EASTERN DISTRICT OF CALIFORNIA
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11 UNITED STATES OF AMERICA) CR. NO. S-05-240 GEB
)
12 Plaintiff,) GOVERNMENT'S SUPPLEMENTAL
) OPPOSITION TO DEFENDANTS' SECOND
13 v.) MOTION FOR RECONSIDERATION
) REGARDING RELEASE ON BOND
14 HAMID HAYAT, and)
15 UMER HAYAT,) Date: Sept. 23, 2005
) Time: 2:00 p.m.
16 Defendants.) Court: Hon. Chief Mag. Judge
) Gregory G. Hollows
17 _____)

18
19 Plaintiff United States of America files this supplemental
20 opposition to defendant Hamid Hayat's second motion for
21 reconsideration regarding release on bond.

22 A. The First Superseding Indictment

23 On September 22, 2005, the Grand Jury returned a First
24 Superseding Indictment. The Indictment charges defendant Hamid
25 Hayat with providing material support to terrorists in violation of
26 18 U.S.C. § 2339A (Count 1, a new charge), and two counts of making
27 false statements in violation of 18 U.S.C. § 1001 (Count 2 and 3,
28 the same charges alleged in the original Indictment, but

renumbered). The Indictment also charges defendant Umer Hayat with one count of making a false statement in violation of 18 U.S.C. § 1001 (Count 4, the same charge alleged in the original Indictment, but renumbered).

B. Detention of Hamid Hayat on the Grounds of Flight and Danger Is Plainly Authorized Because He Is Charged with a Crime Listed under 18 U.S.C. § 2332b(g) (5) (B)

The court shall conduct a detention hearing to determine whether conditions will reasonably assure the appearance of a defendant and the safety of the community "in a case that involves ... an offense listed in section 2332b(g) (5) (B) for which a maximum term of imprisonment of 10 years or more is prescribed." 18 U.S.C. § 3142(f) (1) (A). Providing material support to terrorists, 18 U.S.C. § 2339A, is listed under 18 U.S.C. § 2332b(g) (5) (B). Moreover, the maximum authorized sentence for material support is 15 years. See 18 U.S.C. § 2339A. As such, the government is entitled to a detention hearing, and, detention may be predicated on either risk of flight or danger to the community. See 18 U.S.C. § 3142(f), (g); United States v. Byrd, 969 F.2d 106, 109-10 (5th Cir. 1992); United States v. Singleton, 182 F.3d 7, 9 (D.C. Cir. 1999).

C. There Is A Rebuttable Presumption of Detention as to Hamid Hayat Based on the Material Support Charge

There is a rebuttable presumption of pretrial detention for any offense listed in 18 U.S.C. § 2332b(g) (5) (B) that has a maximum sentence of ten years or more. See 18 U.S.C. § 3142 (e). Subsection (e) states, in relevant part:

Subject to rebuttal by the person, it shall be presumed that no condition or combination of conditions will reasonably assure the appearance of the person as required and the safety of the community if the judicial officer finds that there is probable

1 cause to believe that the person committed ... an offense under
2 section ... 2332b(g)(5)(B) of title 18, United States Code for
3 which a maximum sentence of imprisonment of 10 years or more is
prescribed....

4 18 U.S.C. § 3142(e). Here, the grand jury found probable cause to
5 believe that Hamid Hayat violated 18 U.S.C. § 2339A. Moreover,
6 providing material support to terrorists is a listed offense with a
7 maximum sentence of 15 years. See 18 U.S.C. §§ 2332b(g)(5)(B),
8 2339A. Thus, there is a rebuttable presumption that no condition(s)
9 will reasonably assure the appearance of defendant Hamid Hayat as
10 required, as well as the safety of the community.

11 D. Defendant Hamid Hayat Now Faces Exposure of 30-31 Years
12 Imprisonment

13 When charged with false statements alone, defendant Hamid Hayat
14 was facing potential incarceration of 16 years. With the addition
15 of the Material Support charge, defendant Hamid Hayat's advisory
16 guideline sentencing range is now 30-31 years.¹

17 E. Hamid Hayat Should Be Detained

18 Given the new Indictment, and changed factual and legal
19 circumstances related thereto, it should be even more clear that
20 defendant Hamid Hayat poses a significant flight risk and danger to
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22 ¹U.S.S.G. § 2M5.3 provides for a base offense level of 26 if a
23 defendant provided material support or resources to designated
24 foreign terrorist organizations or for a terrorist purpose. There
25 is a further 2 level enhancement if the offense involved the
26 provision of funds or other material support with the intent,
27 knowledge, or reason to believe they are to be used to commit or
28 assist in the commission of a violent act. U.S.S.G. § 3A1.4
indicates, in relevant part, that the offense level is increased by
12 levels and the criminal history is VI, if the offense is a felony
that involved or was intended to promote a federal crime of
terrorism. Thus, Hamid Hayat's total offense level would be 40 with
a criminal history of VI. Under this guideline, the post-trial
advisory guideline range for Hamid Hayat would be 360 months-life
with a statutory maximum sentence of 31 years. Hence, the final
advisory range is 30-31 years.

1 the community and that there are no conditions which will reasonably
2 mitigate these risks. As such, defendant Hamid Hayat should be
3 detained pending trial.

4 DATED: September 22, 2005

Respectfully submitted,

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